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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,891	12/20/2001	Mark B. Roller	22956-0741(MIT264)	3207
21125 7590 07/15/2008 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604				
EXAMINER				
PHILOGENE, PEDRO				
ART UNIT		PAPER NUMBER		
3733				
NOTIFICATION DATE		DELIVERY MODE		
07/15/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doctet@nutter.com

Office Action Summary

Application No.

10/027,891

Applicant(s)

ROLLER ET AL.

Examiner

Pedro Philogene

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Rogers et al. (6,846,313) in view of Shalaby (6,197,320).

With respect to claims 1, 5, 9, Rogers et al disclose a bioabsorbable medical device (2,3,5) comprising a first bioabsorbable contact surface (28) a second bioabsorbable contact surface; as best seen in FIG.1 (outer surface of the pin) wherein the first and second contact surfaces are moveable with respect to each other; as set forth in column 5, lines 1-67, column 2, lines 1-67, and as best seen in FIGS.1-7. The device made of bioabsorbable copolymers and blend thereof, as set forth in columns 6-7, lines 1-67, columns 8-9, lines 1-67, columns 9-11, lines 1-67.

Although in column 8, lines 25-34, Rogers et al teach of a dye (coating) added to the device, it is noted that Rogers did not teach of a coating, as claimed by applicant. However, in similar art, Shalaby, column 7, lines 18-53, column 8, lines 1-51, provides the evidences of the use of a bioabsorbable lubricating coating for tissue regeneration and to decrease friction during the operation of the device.

Therefore, given the teaching of Shalaby, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of

Rogers, as taught by Shalaby, for tissue regeneration and to decrease friction during the operation of the device.

With respect to claims 2-4,6-8,11-13, The above combination of references discloses all the limitations; as set forth in column 5, lines 1-67, column 2, lines 1-67, and as best seen in FIGS.1-7, as set forth in columns 6-7, lines 1-67, columns 8-9, lines 1-67, columns 9-11, lines 1-67 of Rogers et al; and as set forth in column 7, lines 18-53, column 8, lines 1-51 of Shalaby.

Response to Amendment

Applicant's arguments, see Remarks, filed 4/24/08, with respect to the rejection(s) of claim(s) 1-9, 11-13 under 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rogers/Shalaby.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
July 9, 2008